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DAVIS & BUJOLD, P.L.L.C.
112 PLEASANT STREET
CONCORD, NH 03301

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| MASKULINSKI, MICHAEL C |

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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# BEFORE THE BOARD OF PATENT APPEALS
# AND INTERFERENCES

Application Number: 10/614,630
Filing Date: July 07, 2003
Appellant(s): FAIR, ROBERT LAWRENCE

**MAILED**

OCT 0 5 2007

Technology Center 2100

Gary D. Clapp
<u>For Appellant</u>

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed June 29, 2007 appealing from the Office

action mailed February 7, 2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

| | | |
|---|---|---|
| 5,768,501 | LEWIS | 6-1998 |

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by
Lewis, U.S. Patent 5,768,501..

Referring to claim 1:

a.      In column 6, lines 8-25, Lewis discloses a topographical view of a network
that shows the lowest level, e.g. cables and higher levels, e.g. networks, LANs,
rooms (a plurality of domains structured as an integrated, cooperative cluster of
domains including hierarchically related domains).  Further, in column 1, lines 47-
48, Lewis discloses a domain type that is a grouping based upon functional
characteristics of network resources (and peer related domains).  In column 1,
lines 35-65, Lewis discloses each domain performing one or more functions
supporting the services provided by the system resource.

b.      In column 5, lines 53-57, Lewis discloses a topological display of the
network that shows hierarchical relationships between network devices
hierarchically related domains include a higher level domain and a lower level
domain respectively performing higher and lower level operations of one or more
related functions supporting the services provided by the system resource.

c.      In column 1, lines 47-48, Lewis discloses a domain type that is a grouping
based upon functional characteristics of network resources (peer related
domains include parallel domains performing related operations in mutual
support of one or more related functions supporting the services provided by the
system resource)

d.      In column 8, lines 12-19, Lewis discloses inter-domain monitoring and
alarms and an example of an inter-domain alarm as a notification that a router in
domain A may be faulty or degraded, and thus may affect the throughput or other
performance characteristics of domain B.  An example of a command is a
command to re-route data from domain A intended for domain B through a
different router than the faulty or degraded router (a domain having a peer
related domain monitors the peer related domain and assumes the operations
performed by the peer domain upon detecting a failure in the peer related
domain).

Referring to claim 2, in column 1, lines 47-48, Lewis discloses a domain type that
is a grouping based upon functional characteristics of network resources (peer related
domains performing related operations in mutual support of one or more related
functions supporting the services provided by the system resource).

**(10) Response to Argument**

On pages 8-9, the Appellant argues, "It is long established that, as stated
explicitly in, for example, section 2111.01 of the Manual of Patent Examining Procedure
(MPEP), that an Applicant is entitled to be his or her own lexicographer, even to the
extent that the Applicant may set forth a definition of a term that is different from its
ordinary and customary meanings, such as set forth in standard references such as
dictionaries.  The sole requirement, as stated in, for example, is that the Applicant do so
with reasonable clarity, deliberateness, and precision and in some manner within the
patent disclosure so as to give one of ordinary skill in the art notice of meaning of the

term as used by the Applicant." The Examiner submits that the Appellant has failed to

set forth the definitions with reasonable clarity, deliberateness, and precision. The

Appellant has chosen to use broad, vague terms such as "shared resource",

"hierarchically related domains", and "peer related domains". As examples in the

specification, the "shared resource" could best be described as a file server, the

"hierarchically related domains" could best be described as any of the high level and low

level domains within a domain, a system, or an element, and "peer related domains"

could best be described as blade domains. The Applicant is entitled to what is claimed

and its equivalents. Without specifically claiming what each limitation is defined as, it is

proper for the Examiner to give the broadest reasonable interpretation. The Examiner

believes that a reasonable interpretation would be to interpret the "shared resource" as

a network since it is shared amongst clients as is a file server; the "hierarchically related

domains" as geographical domains, organizational domains, and network resource

domains (see Lewis column 1, lines 25-65); and the "peer related domains" as routers in

a network since they operate on a peer level and are capable of assuming the functions

of each other. The Examiner feels that a reasonable interpretation has been given

since in light of the Appellant's specification a "shared resource" is something shared

amongst clients, a "hierarchically related domain" is anything within the shared resource

that has hierarchical components, and a "peer related domain" is anything that operates

in parallel and performs the same or related operations. This is further supported by the

Appellant on page 13, "Briefly and simply stated, 35 U.S.C. 102 essentially requires that

a single prior art reference show each element recited in the claims in question and that

the elements perform the same functions and have the same functional relationships as recited in the claims in question."

On page 10, the Appellant argues, "The meaning of the terms 'inter-relationships' and 'inter-operations', in referring to the operational and structural relationships between the domains of the system resource, are in fact fully defined and recited in the claims." The Examiner disagrees. The Appellant has done nothing more than recite the claim as support for this argument. Nowhere in the claim language is it shown how a hierarchically related domain and a peer related domain are even related. In fact, it isn't even claimed that a hierarchically related domain comprises a peer related domain. The term cooperative doesn't mean the same as inter-operations or inter-relationships. For example, a group of people could work individually in a cooperative effort to achieve an overall task by doing separate unrelated tasks. It appears that the Appellant relies too heavily on the disclosure for definition of every limitation in the claims.

On page 14, the Appellant argues, "It is therefore apparent that there are a number of fundamental differences and distinctions between Lewis '501 and the present invention, as recited in claims 1 and 2. For example, while Lewis '501 employs the term 'domain', Lewis '501 attaches the term only to a single element of the Lewis '501 system. As defined by Lewis '501, domains are explicitly described and defined solely as collections of networks performing a given type of function or set of related functions and all of the networks in a given domain perform a given type of function or a group or set of related functions." The Examiner disagrees. The Appellant has not shown where in Lewis this is disclosed. Further, in column 1, lines 27-28, Lewis discloses that there

are various types of domains. One is based on geographical location. How is this

domain a collection of networks performing a given type of function or set of related

functions? If the Appellant is arguing what is disclosed in column 1, lines 47-65, then

how is a network that performs the same function composed of a single element? By

the very nature of a network, there are numerous elements that make up the entire

network.

On page 14, the Appellant argues, "It must be noted in this regard that although

Lewis '501 uses the term 'multi-domain' in identifying multi-domain manager 30 of the

Lewis '501 system, this use of the term 'multi-domain' does not extend or expand the

term 'domain' to include any element of the system other than the collections of like

communications networks. This use of the term 'multi-domain' merely indicates that the

'multi-domain manager 30' is a system element that manages multiple communications

network domains and the multi-domain manager 30 Is not described or defined by

Lewis '501 as being a domain of any form." The Examiner disagrees. The Appellant

argues that a domain refers to different elements in the system. By this definition, the

servers, clients, routers, communication links are all domains. In column 6, lines 8-14,

Lewis discloses that the SPECTROGRAPH user interface provide a highly graphical

multi-perspective view into the network model. The user interface enables the user to

navigate through a landscape in which cables, networks, local area networks and even

rooms show up as icons, and which icons indicate the health and performance

characteristics of those elements. Without, a clear and concise description of what a

domain is in the claim language, it is difficult to determine what the Appellant is

attempting to claim as their invention. The reference of Lewis has fulfilled the definition of domain as presented by the Appellant.

On page 14, the Appellant argues, "It must therefore be noted that, in addition to referring to only a single type of element of the Lewis '501 system, the definition of 'domain' as employed in Lewis '501 does not comply with any of the definitions of 'domain' as given in the Microsoft Company Dictionary, thus immediately contradicting the Examiner's definition of the 'accepted' meaning of the term as defined in the Microsoft Company Dictionary." The Examiner disagrees. The reference of Lewis fully fulfills the second and third definition of the Microsoft Computer Dictionary because Lewis is relevant to networks and the Internet.

On page 15, the Appellant argues, "According to Lewis '501, however, domains are explicitly defined as collections of networks performing a given single type of function or a single group or set of related functions. Lewis '501 further states that all of the networks that perform a single type of communication operation are gathered into a corresponding single 'domain', so that different 'domains' must therefore, by definition, perform different types of communications operations." The Examiner disagrees. The term "domain" in Lewis is the well-accepted meaning given that it is related to networks. However, for sake of argument, if the Examiner was to rely on the Appellant's definition of "domain" as given in the specification, then each network that performs a single function would be a domain and since there are multiple networks that perform the same function, then there are multiple peer-related domains since they all perform the same function.

On pages 15-16, the Appellant argues, "Lewis '501 does not in any way teach, or even suggest or hint, that any Lewis '501 network domain could monitor the operations of another network domain. In accordance with these definitions, but instead specifically teaches the use of completely separate elements, that is, network management systems 11, to perform all network domain monitoring operations." The Examiner disagrees. In column 8, lines 13-20, Lewis discloses that an example of an inter-domain alarm is a notification that a router in domain A may be faulty or degraded, and thus may affect the throughput or other performance characteristics of domain B. An example of a command is a command to re-route data from domain A intended for domain B through a different router than the faulty or degraded router. This is an example of one domain monitoring another.

On page 16, the Appellant argues, "In addition, Lewis '501 does not teach or even suggest or hint that a given network domain could or should assume the operations of another domain when it detects a fault or failure in that other domain, as presently recited." The Examiner disagrees. In column 8, lines 13-20, Lewis discloses that an example of an inter-domain alarm is a notification that a router in domain A may be faulty or degraded, and thus may affect the throughput or other performance characteristics of domain B. An example of a command is a command to re-route data from domain A intended for domain B through a different router than the faulty or degraded router. By the Appellant's definition of domain, all of the routers would be a peer-related domain because they all perform the same operation. Therefore, failing over from one router to another teaches the Appellant's claimed invention.

On page 16, the Appellant argues, "it is apparent that there are no peer relationships and no peer domains present in the Lewis '501 system and Lewis '501 does not teach, or in any way suggest or even hint, at the possibility of peer elements or domains." The Examiner disagrees for at least the reasons given above.

On page 17, the Appellant argues, "It is apparent that, by definition and by the teaching and disclosure of Lewis '501, Lewis '501 does not teach or suggest the existence or use of hierarchical domains because the only form of domains in the Lewis '501 system, that is, the network domains, are all at the same structural and functional level and thereby cannot be hierarchical to one another." The Examiner disagrees. The Appellant's disclosure never discloses why one element is at a higher level than another. Instead it seems that it is more of a random assignment. The Appellant uses the term hierarchical domains to describe a system and its subsystems. All of the subsystems perform a specific function, but that doesn't make one subsystem higher than another. Further, in column 1, lines 25-53, Lewis discloses a domain based on geographic location, a domain based on organization or departments, and third domain based on functional characteristics. All of these domains are related to each other and form a hierarchy because the system of Lewis is concerned with networks and subnetworks. In a network, there is a global network and then that is broken up into smaller local networks like cities, and that is further broken up into personal and business networks. Each one of these levels of networks are a domain in Lewis.

On page 17, the Appellant argues, "Lastly, and for the reasons discussed above, Lewis '501 does not and cannot teach or suggest 'a shared system

resource...comprising...a plurality of domains structured as an integrated, cooperative

cluster of domains including hierarchically related domains and peer related domains'

because Lewis '501 does not teach or suggest a system including peer domains and

hierarchical domains, as described and defined in the specification and recited in the

claims presented for appeal." The Examiner disagrees for at least the reasons above.

## (11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the

Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Michael Maskulinski

Primary Examiner

Conferees:

Robert Beausoliel

Scott Baderman